

Exhibit E

NAK5phil

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 138 (LJL)

5 NEIL PHILLIPS,

6 Defendant.

7 Trial

-----x

8 New York, N.Y.
9 October 20, 2023
10 9:10 a.m.

11 Before:

12 HON. LEWIS J. LIMAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: THOMAS S. BURNETT

KIERSTEN A. FLETCHER

18 ANDREW M. THOMAS

Assistant United States Attorneys

19 KAPLAN HECKER & FINK LLP

20 Attorneys for Defendant

21 BY: SEAN HECKER

JENNA M. DABBS

22 DAVID N. GOPSTEIN

ANNE R. YEARWOOD

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(Trial resumed; jury not present)

THE COURT: I assume that there is a still live issue in dispute with the parties with respect to summary charts; is that correct?

MR. THOMAS: That's correct, your Honor.

MR. HECKER: It is, your Honor.

THE COURT: I am prepared to give you my ruling on that.

The defense moves to exclude Government Exhibit 650 to 652 which are three summary charts the government proposes to offer through the FBI case agent under Rules 1006 and 403. The motion to exclude is granted and the charts are excluded under Rule 403.

Under Rule 1006, a proponent of evidence "may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in Court." Fed. R. Evid. 1006. The Second Circuit has long approved the use of charts in complex trials and has allowed the jury to have the charts in the jury room during its deliberations, so long as the long properly instruct the jury that it is not to consider the charts as evidence. See *United States v. Ho*, 984 F.3d 191, 209-10 (2d Cir. 2020); *United States v. Casamento*, 887 F.2d 1141, 1151 (2d Cir. 1989).

The proposition that the Court has the power to permit

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1 the receipt of the summary charts does not mean that it should
2 exercise that power. The first chart is headed: "ANC Election
3 and OT Option Timeline." The second and third are headed:
4 "December 26 Trading and December 28 Trading," respectively.
5 They contain excerpts from a total of five exhibits. None of
6 the exhibits is particularly lengthy. Each has been the
7 subject of extensive testimony in this case. The Court
8 permitted the government to walk slowly through one of the
9 exhibits with a lay witness, although that witness gave
10 permissible testimony regarding the industry meaning of certain
11 terms. His testimony also gave the jury the opportunity to
12 study the text messages carefully in a chronological order.
13 The government's expert also walked slowly through the time
14 sequence at issue here. There is nothing in the summary charts
15 that the Court would not expect the government to replicate
16 when it does its summation in this case. The main value of the
17 charts seems to be that they can be carried into the jury room
18 as a summary of the government's theory of the case.

19 The charts resemble those in *Ho* in that they are a
20 timeline, but that is where the resemblance ends. The charts
21 in *Ho* summarized numerous exhibits. The Second Circuit stated
22 that those exhibits comprised hundreds of pages.

23 Assuming that the charts would be admissible under
24 Rule 1006, their probative value in helping the jury is
25 marginal. They are not a true summary. And that value is

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1 substantially outweighed by a number of risks: (1) that the
2 charts will be used in the jury room not as a substitute for
3 voluminous records that the jury would otherwise need to spend
4 time reviewing, but as a summary of the government's summation
5 without the defense having the opportunity of a summary of its
6 summation also being sent into the jury room; (2) that the
7 jury's time will be wasted; and (3) that the evidence is
8 needlessly cumulative to what has already been presented.

9 Thus, the charts' legitimate value in proving the
10 contents of voluminous writings is substantially outweighed by
11 their prejudicial effect of permitting the jury to have the
12 government's summation during deliberations but not the
13 defense's, so defendant's motion to exclude them is granted.

14 I gather that there are there some other issues
15 between the parties?

16 MR. THOMAS: The issues have been narrowed since the
17 government wrote the Court this morning but there are two
18 issues we just want to put on the record.

19 THE COURT: And I should tell you that if you wrote me
20 this morning, I did not have a chance to look at what you
21 wrote. So if you want to summarize whatever you need me to
22 address, go ahead.

23 MR. THOMAS: Yes, your Honor.

24 As we raised a few times throughout the trial, the
25 26.2 productions in this case have been extremely meager, there

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1 is essentially no substantive notes from either expert, and the
2 problem with that was compounded by the production of about 50
3 charts that were not associated with any particular person or
4 identified to one expert or the other, and only really last
5 night did we learn that they're associated, at least in part,
6 with Mr. Newman. For purposes of making sure that we are able
7 to conduct the cross-examination of Mr. Newman and Mr. Froot,
8 we just ask the Court to direct defense counsel to identify
9 which of the charts Mr. Newman has adopted and which ones
10 Mr. Froot has adopted. We are prepared to start today and to
11 go forward. We think we are entitled to that under the rules.

12 THE COURT: That does not seem like a heavy lift,
13 Mr. Hecker.

14 MR. HECKER: It is not, your Honor. And just so the
15 record is clear, we hadn't anticipated that the government
16 would be done so early so last night we worked, with our
17 experts, to try to streamline the presentation and are now
18 intending only to call Mr. Newman, and hence some of the
19 confusion last night with our trying to get the government, as
20 quickly as we could, which of the exhibits we were going to
21 propose having Mr. Newman testify about. I told the government
22 this morning that if they didn't have enough time and wanted to
23 postpone the examination until Monday we were open to that but
24 I think we can get them what they need in time to do it if the
25 government wants to go forward.

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1 So, we are not intending any unfair surprise, it is
2 really a function of our attempting to streamline our case and
3 to get it to the jury more quickly and reduce the number of
4 witnesses.

5 THE COURT: So if you spent time last night figuring
6 out which charts Mr. Newman is going to adopt, do you know that
7 now?

8 MR. HECKER: We have been in discussion with them in
9 real-time all morning telling them exactly which ones aren't
10 going to be used and which ones are, and -- I am looking to my
11 colleague.

12 MR. GOPSTEIN: We are close, your Honor.

13 THE COURT: So, my expectation is really two-fold.
14 First of all, I think we will take two breaks this morning, we
15 will take a break at around 10:45 and take another break around
16 12:15. That obviously depends on where we are with respect to
17 witnesses. My expectation is that by the time I come out on
18 the bench at the end of the first break, you will have provided
19 to the government what those exhibits are.

20 MR. HECKER: For sure, your Honor. And the only -- I
21 don't know how long the government thinks their last two
22 witnesses will take. It may be that it's quite quick, so just
23 putting that on the record, and if we need to take a break and
24 use that time to get everyone comfortable, we will do that.

25 THE COURT: My ruling will be whenever the end of the

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1 first break is. At that point you will have provided the
2 government which are charts Mr. Newman is adopting.

3 MR. HECKER: We absolutely will.

4 THE COURT: Does that take care of it?

5 MR. THOMAS: I think, your Honor, but just to be
6 absolutely clear, we are not asking which ones he will use. We
7 want to know which ones he adopted but isn't using as well to
8 make use of them on cross-examination the same way they did
9 yesterday with our expert but that timing works for the
10 government and we would be --

11 THE COURT: What, exactly, does that mean? With
12 respect to their cross-examination of your expert, what I
13 permitted them to do was if, to use a chart that your expert
14 had -- or information, opinions that your expert had previously
15 provided as a prior inconsistent statement if they were able to
16 establish the predicate for there being a prior inconsistent
17 statement. I'm not sure exactly how that maps onto the charts
18 here. Tell me a little bit more precisely what you are looking
19 for.

20 MR. THOMAS: Yes, your Honor. I think it is actually
21 pretty simple. We just want to know which of the charts are
22 Mr. Newman's statements, whether those charts happened to end
23 up being used or not, and if the answer is only the ones that
24 are used are his statements, we are prepared to accept that.
25 We are just entitled, under 26.2, to know which statements

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1 Mr. Newman has made to the defense. That's all that we are
2 seeking.

3 MR. HECKER: And I think it will be a null set, it
4 will be the ones he is using.

5 MR. THOMAS: One point of clarification on the charts
6 issue, Judge. Absolutely hear the Court on its ruling. May we
7 be permitted to use them purely as demonstratives and not offer
8 them?

9 THE COURT: Yes. I think you can.

10 MR. THOMAS: Thank you, your Honor.

11 MR. HECKER: On that, just so the record is clear, I
12 don't think they're intending to put it in through a case agent
13 but maybe I am wrong about that.

14 MR. THOMAS: He is an FBI agent. He is not the case
15 agent in the sense that he is the agent who worked on this
16 case.

17 MR. HECKER: So that goes to a separate 403 issue
18 about our ability to cross-examine someone who is going to put
19 in a selection and only a selection of the government's
20 exhibits and not be able to opine about any of the other
21 information that might render that information misleading to
22 the jury. And so, it is a separate 403 issue to have someone
23 with no knowledge put up demonstratives of the government's
24 closing slides and I have no ability to cross-examine him. I
25 mean, I could do it but on things he has never seen and say,

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1 did the government give you this? Did the government give you
2 that? I can do a whole song and dance, I can do it for a long
3 time.

4 THE COURT: And they're all in evidence, right.

5 MR. HECKER: They are. They are. We can do that --

6 MR. THOMAS: Not yet, but.

7 MR. HECKER: We can do that but, respectfully, I think
8 it is prejudicial and I think it is confusing. I mean, it will
9 literally be me arguing with someone who knows nothing about
10 the case, about evidence they haven't seen, so that I can make
11 the point to the jury that the presentation is missing things.
12 I mean if they want to do that I suppose we could go through
13 that. I think it is not helpful to the jury's decision and it
14 really prejudices the defense to have someone they can't
15 cross-examine because they have only give him a handful of
16 things they like. That is literally what they are doing.

17 MR. THOMAS: May I respond, your Honor?

18 THE COURT: Yes.

19 MR. THOMAS: First of all, no requirement that a
20 witness be knowledgeable about all aspects of the case. And
21 even in this sort of publishing to the jury function, routinely
22 in this building and in the courts of this Second Circuit --

23 THE COURT: Just tell me what he is going to be doing.

24 MR. THOMAS: So, for the most part, I think what we
25 will do is we will have him put up for the jury a number of

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1 exhibit they have not seen, and listen to audio recordings they
2 have not seen, and then point out the time comparison between
3 them. *This message precedes this audio recording by 3 minutes,*
4 *5 minutes. This message begins here, ends there. That's a*
5 *total span of 45 minutes.* That kind of thing.

6 I think we, you know, in some alternate universe we
7 could put up a paralegal but the cross-examination that
8 Mr. Hecker is describing is sufficient to demonstrate the point
9 that the defense would want to make, that this witness' role
10 essentially is to be a conduit for documentary evidence that
11 has not been shown to the jury. There is no prejudice to that.
12 Whatever prejudice exists there is cured by the very fact of
13 such a cross-examination. It is manifestly helpful to the jury
14 because for a lot of these recordings, especially those that
15 relate to that December 28th timeline, the jury has not heard,
16 they have not seen the transcripts, they haven't seen the
17 associated chat, and we are in a circumstance here where the
18 case primarily relates to the defendant who obviously is
19 unavailable to the government as a witness, and a
20 co-conspirator who is deceased. There is no special prejudice
21 that attaches for being a defendant in that posture. We are
22 trying to make use of the evidence we have got and the jury
23 should know it.

24 MR. HECKER: Respectfully, I wasn't aware that -- the
25 3500 were the slides so we understood that was what they

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1 planning to do with the witness. I didn't know he was going to
2 play and publish tapes that the jury hasn't heard that aren't
3 in evidence yet -- they haven't been published yet. I agree
4 that is permitted. What I disagree is that he can be used to
5 make the government's argument and not be cross-examinable in
6 that context. They're different, they're argumentative slides
7 as opposed I am playing for you this tape, here is when that
8 happened. That's different. I agree.

9 THE COURT: The defense's objection is overruled. I
10 will give an instruction that the charts are just being used as
11 demonstrative aids and they're not evidence and that they have
12 only the value that the jury ascribes to the underlying
13 evidence.

14 Anything else from the government?

15 MR. THOMAS: No, your Honor.

16 THE COURT: Anything else, Mr. Hecker?

17 MR. HECKER: Just a scheduling issue. We would like
18 to be heard on the Rule 29 issue at the close of the
19 government's case. I understand the Court has indicated what
20 its intention is, but we would like to be heard on that before
21 we go to a defense case.

22 THE COURT: I think I indicated that you would be
23 heard, that I will give you as much time as you need to be
24 heard so that's how we will proceed.

25 MR. HECKER: OK. Thank you.

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Salemme - Cross

(In open court; jury present)

THE COURT: Mr. Hecker, we'll take our break shortly before 11:00, so keep that in mind.

CROSS-EXAMINATION

BY MR. HECKER:

Q. Good morning, Agent Salemme.

A. Good morning.

Q. Could you just remind the jury about what type of financial crimes you investigate in your day job.

A. Complex financial crimes and securities fraud.

Q. Is it fair to say that, as part of your work, you investigate a variety of different kinds of fraud?

A. Yes.

Q. Is it further fair to say that, in fraud cases, you're often investigating representations that are made to groups of people to determine whether or not they're accurate?

A. Could you repeat the question.

Q. Sure.

MR. HECKER: Can we read it back.

THE COURT: Yes. You may have the court reporter do so.

I'll tell both counsel that, if there are requests for readbacks, the request comes to me, not the court reporter.

MR. HECKER: I apologize, your Honor.

(Record read)

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Salemme - Cross

1 THE COURT: Sorry, I'm not sure I 100 percent
2 understand the question.

3 BY MR. HECKER:

4 Q. In cases of fraud, are you often investigating whether
5 someone has made statements or representations to groups of
6 people that are misleading?

7 A. Yes.

8 Q. Or false; correct?

9 A. Yes.

10 Q. And in determining whether something is misleading, is it
11 fair to say that something could be misleading because it's
12 simply inaccurate on its face?

13 A. Could you repeat the question again.

14 Q. Let me try it differently.

15 Something could constitute fraud if a statement is
16 made that's false; correct?

17 A. Correct.

18 Q. But another kind of fraud is when someone misleads a group
19 of people by presenting certain information and then omitting
20 material information that's not included in the statement.

21 Do you agree with me?

22 MR. THOMAS: Objection, your Honor, 403.

23 THE COURT: Overruled.

24 THE WITNESS: I'm not sure I 100 percent understand
25 the question.

NAKGphi2

Salemme - Cross

1 BY MR. HECKER:

2 Q. I think I tried a simple one.

3 A. Yeah.

4 Q. Fraud can consist of making false statements to someone;
5 right?

6 A. Yes.

7 Q. It can also consist of making statements to someone that is
8 misleading because they omit or don't include material
9 information that you would need to understand the statement?

10 A. Yes, yes.

11 Q. And I just want to be really clear about this, you weren't
12 the case agent who investigated this case; right?

13 A. No.

14 Q. There is a case agent, yes?

15 A. Yes, there is a case agent.

16 Q. Is that Special Agent Patrick Zielinski?

17 A. Yes.

18 Q. Do you understand why you were asked to testify today in
19 this courtroom rather than the case agent?

20 A. No, I'm not sure.

21 Q. Just so the jury understands, the questions and answers we
22 just went through in order for you to create these
23 demonstratives, am I correct that you did no independent
24 investigation?

25 A. I did no independent investigation.

NAKGphi2

Salemme - Cross

1 Q. When you do independent investigations, you interview
2 witnesses; right?

3 A. You could.

4 Q. I mean, do you ordinarily interview witnesses in connection
5 with your investigations?

6 A. Yes.

7 Q. You would want to talk to the people who participated in
8 the events that are relevant to the jury's considerations;
9 right?

10 A. Yes.

11 Q. You would review documents; right?

12 A. Yes, you would review documents.

13 Q. And when you review documents in cases where you are the
14 case agent, do you make it a practice to simply ask the
15 prosecutors to give you those documents that they think are
16 helpful to their case?

17 A. Could you repeat the question.

18 MR. HECKER: Your Honor, can we have that question
19 read back.

20 THE COURT: Yes, you may do so.

21 (Record read)

22 THE WITNESS: No.

23 BY MR. HECKER:

24 Q. You would want all of the relevant information; right?

25 A. Yes.

NAKGphi2

Salemme - Cross

1 Q. And you wouldn't rely on the prosecutors who are trying to
2 persuade a jury of something to just tell you which pieces of
3 evidence they think would be of interest; right?

4 A. No.

5 Q. But that is exactly what happened in this case; correct?

6 A. Correct.

7 Q. That's because you are not the agent who investigated the
8 facts of the case; right?

9 A. I am not the agent that investigated the facts of the case.

10 Q. You didn't speak to a single witness who is represented on
11 any of the demonstratives that you just talked about in front
12 of the jury; right?

13 A. No.

14 Q. You didn't interview Jonny Fayman; right?

15 A. I did not interview him.

16 Q. Do you know that Jonny Fayman was the co-Chief Investment
17 Officer for Glen Point?

18 A. No.

19 Q. Do you know that he was working with Mr. Phillips in
20 creating the strategy that the fund employed to invest around
21 issues relating to the South Africa elections?

22 A. No, I do not know that.

23 Q. You know nothing about that?

24 A. No.

25 Q. Do you know if the government spoke to Mr. Fayman?

NAKGphi2

Salemme - Cross

1 A. I do not know.

2 Q. Is that something you would want to know if you were case
3 agent?

4 A. Yes.

5 Q. Do you know who Mr. Henderson is from the broker who
6 actually brokered the option at issue in this case?

7 A. I do not know who Mr. Henderson is.

8 Q. You mentioned on one of your charts a Mr. Daniels. Do I
9 have that right?

10 A. There's a Daniels in one of the charts.

11 Q. Do you know who he is?

12 A. I do not.

13 Q. Have you ever spoken to him?

14 A. I have never spoken to him.

15 Q. Do you know if the case agent spoke to him?

16 A. I do not know if the case agent spoke to him.

17 Q. I believe you testified about trading activity across a
18 variety of different days.

19 Do you recall some of that testimony?

20 A. Yes.

21 Q. It includes trading instructions that were given by folks
22 at Glen Point to people at other banks to execute the trades;
23 am I right?

24 A. Correct.

25 Q. Have you spoken to a single one of those people?

NAKGphi2

Salemme - Cross

1 A. I have not spoken to any of them, no.

2 Q. Do you know if the case agent has?

3 A. I do not know if the case agent has or not.

4 Q. Do you know if a single witness who participated in any of
5 the trading in this case have testified in this case?

6 A. I do not know if they have testified in the case.

7 Q. Would it surprise you if none of them have testified?

8 A. I don't know if it would surprise me.

9 Q. If I were to show you information related to Government
10 Exhibit 650, the timeline regarding the 2017 ANC election and
11 one-touch option timeline that you testified about that was
12 very significant information that was excluded from the
13 timeline, would you want to see that?

14 A. I'm not -- I'm not sure if I can talk about what's
15 significant or not in the timeline.

16 Q. Well, I guess, I just want to understand, when you
17 testified to this jury, did you have any concern that there was
18 a possibility that there was significant information that would
19 be material to them that would make it helpful to them to
20 understand the facts in this case that was omitted from your
21 timeline?

22 A. I don't -- I didn't know enough about what was significant
23 outside of what I was shown.

24 Q. Did you take it on faith that the government would give you
25 everything that you needed to present a picture to this jury

NAKGphi2

Salemme - Cross

1 that was true and accurate and not misleading?

2 A. I think I reviewed the documents that I was shown, and I
3 can't testify to what a complete picture would be.

4 Q. That wasn't my question, sir.

5 MR. HECKER: Your Honor, may I have my question read
6 back.

7 THE COURT: Yes.

8 (Record read)

9 THE WITNESS: I don't know if I would know what was a
10 true and accurate picture.

11 BY MR. HECKER:

12 Q. Right. Because you don't know any of the facts relating to
13 this case yourself; correct?

14 A. I don't know any of the facts, other than what I reviewed
15 in the specific documents.

16 Q. You didn't want to paint a misleading picture to the jury,
17 though; right?

18 A. No.

19 Q. So you necessarily relied on the government to give you all
20 the information you would need in order not to mislead the jury
21 in your presentation; is that fair?

22 THE WITNESS: Can I have the question read back,
23 please.

24 THE COURT: The court reporter can read back the
25 question.

NAKGphi2

Salemme - Cross

1 (Record read)

2 THE WITNESS: I relied on the prosecutors to give me
3 all documents that I would need.

4 BY MR. HECKER:

5 Q. To avoid making it misleading?

6 A. I can't really judge what would be misleading or not.

7 Q. Well, isn't it part of your job in investigating fraud
8 cases to try to determine whether someone omitted material
9 information that someone would need to have a complete picture?

10 A. It is.

11 Q. So you're familiar with the concept?

12 A. Yes, but it -- yes.

13 Q. So I'll just ask you again.

14 You necessarily relied on the government and had faith
15 in the government not to put you in a position of presenting
16 this timeline to the jury in a way that would be materially
17 misleading because it omitted important information; correct?

18 MR. THOMAS: Objection, your Honor, argumentative.

19 THE COURT: Overruled.

20 THE WITNESS: I don't know what a complete and/or
21 misleading picture would be. I only know that -- the documents
22 that I was given and I reviewed them for accuracy.

23 BY MR. HECKER:

24 Q. I just want to make sure I understand what you are saying.

25 You are saying you don't know what the accurate

NAKGphi2

Salemme - Cross

1 picture would look like because you didn't investigate; right?

2 A. Yes.

3 Q. So sitting here now, you can't know whether this is
4 materially misleading because it omits important information;
5 right?

6 A. I -- I don't know if that's true.

7 Q. Right. And so you necessarily relied on the government not
8 to put you in the position of misleading the jury by omitting
9 important information; is that fair?

10 MR. THOMAS: Objection, your Honor, asked and
11 answered.

12 THE COURT: Overruled. It's not answered.

13 THE WITNESS: Yes. I relied on the documents the
14 prosecutors gave me.

15 BY MR. HECKER:

16 Q. Have you ever testified in another criminal trial where you
17 had no independent knowledge of the facts that you were
18 testifying about?

19 A. No.

20 Q. Is that a role that exists at the FBI, someone who will
21 show up at trials in which they didn't investigate but provide
22 testimony based entirely on the information that the government
23 gives them?

24 A. My understanding is that agents do, time to time, serve as
25 summary witnesses in cases they haven't investigated.

NAKGphi2

Salemme - Cross

1 Q. Do they have to have any background relevant to the subject
2 matter?

3 A. I don't know completely, but -- I don't know to answer
4 that.

5 Q. You have never done this before?

6 A. I have not done this before, no.

7 Q. It's unusual, isn't it?

8 MR. THOMAS: Objection, your Honor.

9 THE COURT: Sustained.

10 Mr. Hecker, whenever you get to a convenient breaking
11 point.

12 MR. HECKER: Let's pause now.

13 THE COURT: Members of the jury, we're going to take
14 one of two breaks now. We will take a 15-minute break. And
15 then we'll take another break before the end of the day.

16 (Continued on next page)

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NAKGphi2

1 (In open court; jury not present)

2 THE COURT: See you all back here in 15 minutes.

3 (Recess)

4 (Continued on next page)

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Salemme - Cross

1 THE COURT: Be seated. Let's bring in the jury.

2 (Jury present)

3 THE COURT: Mr. Hecker, you may continue.

4 MR. HECKER: Thank you, your Honor.

5 BY MR. HECKER:

6 Q. Mr. White, can you pull up the first page of the
7 government's demonstrative, Exhibit 650?

8 Mr. Salemme, the title of this slide is 2017 ANC
9 Election and OT Option Timeline. Do you see that?

10 A. Yes, I do.

11 Q. What is the ANC?

12 A. I'm not a hundred percent sure.

13 Q. You don't know what the ANC is?

14 A. I don't know what the ANC is.

15 Q. Did you ask the government what the ANC was?

16 A. I did not.

17 Q. Do you know what the ANC election is a reference to?

18 A. I don't know.

19 Q. Do you know what country it relates to?

20 A. I don't know.

21 Q. Sitting here now you are not aware that the ANC election
22 relates to the country of South Africa?

23 A. I'm not a hundred percent sure of that.

24 Q. Are you comfortable giving testimony to this jury to
25 support a demonstrative that you have no idea what the title of

NAK5phi3

Salemme - Cross

1 it means?

2 A. Yes. I reviewed documents that I reviewed and they're
3 accurate.

4 Q. Are you comfortable now?

5 MR. THOMAS: Objection, your Honor.

6 THE COURT: Sustained.

7 Q. Would it surprise you to know that the 2017 ANC election is
8 a reference to the election to head the African National
9 Congress, the overwhelming majority party in South Africa?

10 A. I don't know if it would surprise me or not.

11 Q. It wouldn't surprise you if that's what it is a reference
12 to?

13 A. No, it would not surprise me.

14 Q. Do you know what the OT Option Timeline is?

15 A. I know what the timeline is, that's time as it goes by.

16 Q. We can agree on that.

17 Do you know what an option is?

18 A. In this, in the financial sense?

19 Q. Yes, in the financial sense.

20 A. Yeah, I have a general understanding of them.

21 Q. What is an option?

22 A. It's the option to buy or sell something.

23 Q. Are you aware that this case relates to an option for which
24 the reference asset was a foreign currency exchange rate?

25 A. Yes.

NAK5phi3

Salemme - Cross

1 Q. And you are aware that the foreign currency exchange rate
2 that was relevant was the dollar/ZAR exchange rate?

3 A. Yes.

4 Q. So you knew it related to the exchange rate between the
5 dollar and the South African currency; yes?

6 A. Yes.

7 Q. And you are testifying about a demonstrative exhibit that
8 includes 2017 ANC Election and OT Option Timeline but you
9 didn't know that that was communicating to the jury some
10 connection between the South African ANC election and an option
11 that relates to the foreign currency of the South African
12 country?

13 A. No, I don't know enough about the case to know how all the
14 various things are connected.

15 Q. Do you know when the ANC election was?

16 A. No. Not for sure.

17 Q. Well, do you think it might be December 18th, the date that
18 the first three items on your timeline relate to?

19 A. Yeah. Unconfirmed reports coming in that Cyril Ramaphosa
20 is prevailing in all five positions except the deputy president
21 position. Sounds like an election-type headline.

22 Q. Relating to the ANC election in South Africa.

23 A. Yes.

24 Q. You know that, right?

25 A. Yes, I know it.

NAK5phi3

Salemme - Cross

1 Q. You know who Cyril Ramaphosa is, yes?

2 A. I do not know who he is. I see his name but I don't know
3 who he is.

4 Q. You don't know that he became the leader, eventually, of
5 the ANC and the country South Africa? Do you know that?

6 A. I did not know that.

7 Q. The first item on here which references Government Exhibit
8 407 includes one snippet from a hefty exhibit; is that fair?

9 A. Yes.

10 Q. You had to review this exhibit in order to get comfortable
11 with the idea of putting this snippet in the first box and then
12 the second snippet in the second box; right?

13 A. Yes. I reviewed 407.

14 Q. What's that?

15 A. I reviewed GX- 407.

16 Q. And you wanted to make sure that you were putting the two
17 items that are here in the right order?

18 A. Yes.

19 Q. I mean, you wouldn't want to flip them and get it wrong and
20 create a misleading impression about which came first; right?

21 A. No.

22 Q. And this slide is designed to suggest that there might be
23 activity relating to this option that relates, in some way, to
24 the ANC election. Can we agree on that?

25 A. Could you repeat the question?

NAK5phi3

Salemme - Cross

1 MR. HECKER: May I have that read back, your Honor?

2 THE COURT: Yes, you may.

3 (Record read)

4 A. Yeah. I don't know if the option and the election are
5 connected. They could just be talking about politics.

6 Q. I'm going to ask you again. Did you not want to know,
7 before you testified about this slide, what was being
8 communicated to the jury and why it had some relevance to our
9 case?

10 A. I wanted to make sure that everything was accurate that was
11 in the exhibits that appeared on the slides; if there were
12 communications and that it was audio that it was fair and what
13 I heard.

14 Q. And you wanted to make sure that those communications were
15 put in the right order; right?

16 A. Yes.

17 Q. And you wanted to make sure that what you are quoting in
18 these boxes was an accurate reflection of what's in the
19 underlying exhibit; correct?

20 A. It depends on what you mean by accurate but I wanted to
21 make sure that the thing that is on the page was in the actual
22 exhibit.

23 Q. I just want to understand. When you say "accurate," can we
24 agree that there are a couple different ways of something being
25 inaccurate? Do you agree with me as a general proposition?

NAK5phi3

Salemme - Cross

1 A. Yes, I agree there are multiple ways for something to be
2 inaccurate.

3 Q. One way it can be inaccurate is that you could actually
4 have words in this chart that aren't actually in the exhibit;
5 right?

6 A. Yes, that's a way it could be inaccurate.

7 Q. Or another way would be if there was a taped call and you
8 listened to the call and what is said on the call is different
9 from what is in the exhibit; right? That would be inaccurate?

10 A. I -- could you repeat the question?

11 Q. The way something could be inaccurate is if you played a
12 recording, like those that you testified about, and then you
13 put in a box words that weren't actually on the recording; that
14 would be inaccurate, yes?

15 A. Yes, but I will say that sometimes it's hard to completely
16 transcribe. One person might hear one thing, one person might
17 hear slightly different -- an um or a pause or something like
18 that.

19 Q. In fact, some of the recordings in this case are difficult
20 to decipher; agreed?

21 A. Yeah. I think they did a good job of identifying areas
22 that were not decipherable.

23 Q. And sometimes they used lingo that is not familiar to you,
24 right?

25 A. Yes. That's correct.

NAK5phi3

Salemme - Cross

1 Q. Do you know what a lekker is?

2 A. I don't know what lekker is.

3 Q. Did you look it up when you were listening to the recording
4 that included that expression?

5 A. It's a slang term in South Africa, is my understanding,
6 when I looked it up.

7 Q. Do you recall what it means?

8 A. It is like good cheer kind of, generally.

9 Q. Good cheer.

10 A. Yeah.

11 Q. Can we agree that another way that something could be
12 misleading or inaccurate is that while the quote that is in the
13 box is an accurate transcription of what is in the exhibit but
14 there are other things in the exhibit that render what is here
15 misleading to the jury?

16 A. Do you mean if something were omitted?

17 Q. That would be an example.

18 A. Yeah. I, you know -- yeah, I agree.

19 Q. That can happen?

20 A. Yeah, things -- obviously the entire exhibit is not in the
21 box, yeah.

22 Q. And I just want to make sure I understand your role. Did
23 you inquire of the government whether there might be other
24 evidence that would render these boxes misleading to the jury
25 before you testified?

NAK5phi3

Salemme - Cross

1 A. No. I don't know of other evidence that could contradict
2 this.

3 Q. You took it on faith that they wouldn't put you in that
4 position of failing to give you information that might render,
5 what is here, misleading to the jury?

6 MR. THOMAS: Objection, your Honor.

7 THE COURT: Overruled.

8 A. You know, I understand there is a lot of information that
9 could be in this and I didn't have the time to review every
10 piece of information, so.

11 Q. My question was whether you took it on faith that the
12 government would give you everything you needed to avoid
13 misleading the jury.

14 A. I don't think I took it on faith. I don't think there's --
15 I could have been presented with everything to --

16 Q. But you don't know?

17 A. I don't know, no.

18 Q. So you relied on the government for that?

19 A. Yes, I relied. I relied on the prosecutor team.

20 Q. You didn't just rely on them but you took it on faith that
21 they wouldn't mislead you; right?

22 A. I'm having trouble with this took it on faith way of
23 phrasing the question.

24 Q. You don't understand what that means?

25 A. Not a hundred percent, no.

NAK5phi3

Salemme - Cross

1 Q. You had a belief that the government would give you
2 everything you needed to make sure that these boxes and what
3 they communicate to the jury would be accurate.

4 A. Accurate in the sense that what is on the box is in the
5 communication that it said it is.

6 Q. But not that it's rendered misleading by omitting material
7 information.

8 A. I don't know what is material to this case. There is a lot
9 of information and I was not part of investigating it so I
10 don't know what would be -- would render a complete case or --
11 I don't know.

12 Q. We agree on that. My question is, you therefore had to
13 rely on the government to make sure that you weren't put in
14 that position because you wouldn't be able to tell on your own
15 because you don't know anything about the facts of the case.

16 A. Yes, I had to rely on the documents that were furnished to
17 me.

18 Q. I would like to -- we can take this down for a second and
19 pull up Government Exhibit 407, which was the document that was
20 the source of the information in the very first box. Am I
21 right if we go to the time stamp 16:06:22, I believe the Bates
22 ends in 37 -- yes, that's it.

23 Do you know who Patrick Lamaa is?

24 A. I don't know who Patrick -- actually, I was sent a
25 transcript describing that he was an analyst.

NAK5phi3

Salemme - Cross

1 Q. Do you know where?

2 A. I can't recall but I could be refreshed.

3 Q. It's fine.

4 Am I right that this is the snippet that you confirmed
5 is the source for the first box in your timeline: Just in,
6 unconfirmed reports coming in that Cyril Ramaphosa is
7 prevailing in all five positions except the deputy president
8 position; they are recounting it.

9 Do you see that?

10 A. Yes.

11 Q. That last clause, "they are recounting it," do you know
12 what that means?

13 A. Not a hundred percent sure.

14 Q. Is it possible that they meant that there was an initial
15 counting of the election ballots and then there was a
16 subsequent plan to recount them?

17 MR. THOMAS: Objection, your Honor. Personal
18 knowledge.

19 THE COURT: Overruled, but I will remind the jury that
20 the questions are not evidence, only the answers are evidence.

21 Go ahead, Mr. Hecker.

22 THE WITNESS: Yeah, I don't know the exact election
23 proceedings or how they, if there was a recount or not.

24 BY MR. HECKER:

25 Q. My question is why does the first box -- and perhaps we can

NAK5phi3

Salemme - Cross

1 pull it up side by side, the timeline of the demonstrative that
2 is marked Government Exhibit 650 -- do you see the first box
3 you have a quoted statement from this text? Do you see that?

4 A. Yes.

5 Q. Did you decide to delete the end of the sentence that says
6 "they are recounting it"?

7 A. I did not decide to delete it.

8 Q. Who decided to delete that?

9 A. I relied on the prosecution.

10 Q. So the prosecutors deleted the portion of this exact
11 communication that says they're recounting the election
12 results?

13 A. I don't think deleting and ending a quote earlier is the
14 same thing.

15 Q. Ending the quote earlier could be rendered misleading by
16 omitting what came after it. Do you agree with me?

17 A. Yeah. In theory.

18 Q. In theory.

19 A. I mean, there are a lot of things that are omitted, you
20 know, these are long things.

21 Q. Do a lot of the things that are omitted matter to
22 understanding the communications and whether they're accurate?

23 A. Yes, I think there are some things that are omitted. You
24 know, for example, on the next page there is a message from
25 Phillips that says use someone we don't have an option with, or

NAK5phi3

Salemme - Cross

1 something like that, that I think is relevant as well.

2 Q. I just want to make sure I understand your testimony. You
3 have studied this exhibit?

4 A. I have reviewed it.

5 Q. Carefully enough to recall something that Mr. Phillips said
6 in the same chat later?

7 A. It is on the next page, so.

8 Q. But it is not in the timeline?

9 A. It's not in the timeline.

10 Q. But you are representing to the jury that you think that
11 piece of the chat would be relevant to them?

12 A. I was just saying that there are a lot of -- these are long
13 documents, not everything could make it onto the
14 representation, not the whole chat.

15 Q. Any other things you remember, just off the top of your
16 head, that you think might be of interest to the jury that
17 aren't in your timeline?

18 MR. THOMAS: Objection, your Honor.

19 THE COURT: Overruled.

20 A. No. I mean there is a lot of, like I said, these chats are
21 very long and I -- I'm not in a position to say what would make
22 a completely relevant representation of what is on the chats.

23 Q. Understood.

24 Why don't we move forward in the timeline and pick up
25 at 12/19/2017 -- I am still back in Government Exhibit 407

NAK5phi3

Salemme - Cross

1 which is in evidence, we can take the timeline down for just a
2 second. At 8:18:14, I believe it ends in Bates 53. If we
3 could pull up just the bottom?

4 This is a communication, do you agree, between
5 Jonathan Fayman and Neil Phillips in the same exhibit we were
6 just looking at?

7 A. I agree.

8 Q. And it is dated December 19; correct?

9 A. Correct.

10 Q. And you see it starts with Mr. Fayman saying: I think Ace
11 Magashule is in big trouble?

12 A. I agree.

13 Q. Do you know who that is?

14 A. Ace Magashule, I don't know who that is.

15 Q. Do you know him to be a figure that was relevant to the ANC
16 election in South Africa?

17 A. I don't know for sure. I have seen his name a few times in
18 the chats.

19 Q. So in response to that Neil Phillips says: It is over for
20 him too.

21 Do you see that?

22 A. Yes, I see that.

23 Q. And then the very next thing says: Some fker has stolen
24 ballots.

25 Do you see that?

NAK5phi3

Salemme - Cross

1 A. I see that.

2 Q. Then let's go to the next line on the next page, the top,
3 first line, Neil Phillips: And they will go through
4 everything -- misspelling -- everything now forensically.

5 Do you see that?

6 A. Yes, I see.

7 Q. Can we agree that that is Mr. Phillips telling Jonathan
8 Fayman that there were reports that ballots for the ANC
9 election were stolen and that they were going to do a forensic
10 review of the election results on December 19?

11 MR. THOMAS: Objection, your Honor.

12 THE COURT: Overruled.

13 A. I agree that that is what it says. I don't know the
14 surrounding circumstances.

15 Q. If we could go back to the timeline Government Exhibit 650,
16 is there any entry for December 19?

17 A. No, there is not.

18 Q. If I told you that there were reports that Mr. Phillips was
19 reviewing, in real-time, that the election results were being
20 forensically examined because of reports that ballots had been
21 stolen for the ANC election in 2017, do you think that would be
22 a relevant thing to put in this timeline so that the jury
23 understood what the facts were relating to the election on this
24 timeline?

25 A. I can't a hundred percent make a judgment on what would be

NAK5phi3

Salemme - Cross

1 relevant to put in the timeline or not.

2 Q. You don't have a basis for disagreeing with me that it
3 sounds pretty relevant to a slide that is called 2017 ANC
4 Election and Option Timeline that on the 19th, Mr. Phillips is
5 reporting that there was a recount because of alleged fraud?

6 MR. THOMAS: Objection, your Honor. Counsel is just
7 testifying.

8 THE COURT: Sustained. Sustained.

9 Q. You read this whole chat, right?

10 A. I read the chat.

11 Q. And you read this piece of the chat in the way I am reading
12 it, yes?

13 A. Yes.

14 Q. Did you ask the prosecutors whether It was relevant that
15 there was a recount and a forensic evaluation of the election
16 results on December 19 which is not on your slide?

17 MR. THOMAS: Objection, your Honor. May we be heard
18 at side bar?

19 THE COURT: No, I am going to permit this question but
20 we will see how much longer it goes.

21 THE WITNESS: Could you repeat the question? Sorry, I
22 just lost the thread.

23 MR. HECKER: May I have that read back?

24 THE COURT: Yes.

25 (Record read)

NAK5phi3

Salemme - Cross

1 A. I did not ask them, no.

2 Q. As you sit here now, did you have any concerns that
3 omitting that information could render this demonstrative
4 misleading to this jury?

5 A. I don't know if I am in a position to opine on what makes
6 it misleading or not. This is a very complicated case and I'm
7 not sure I would know what would make it misleading or not.

8 Q. You don't want to mislead them.

9 A. I don't want to mislead them, no.

10 Q. So if it were material, you would want it included here;
11 yes?

12 MR. THOMAS: Objection, your Honor.

13 THE COURT: Overruled.

14 A. Again, I don't know what would make -- what is material or
15 not in this case. These financial matters are very complex.
16 Yes, I don't know exactly what would be considered material or
17 not.

18 Q. You said financial cases like this can be very complex;
19 right?

20 A. Something to that nature, yeah. I don't know if I said
21 those exact words.

22 Q. And there is often a risk of trying to oversimplify cases
23 like that; yes?

24 MR. THOMAS: Objection, your Honor.

25 THE COURT: Sustained.

NAK5phi3

Salemme - Cross

1 MR. HECKER: Your Honor, should we be heard at side
2 bar if the government has an objection?

3 THE COURT: Yes, we will have a side bar.

4 (Continued next page)

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NAK5phi3

Salemme - Cross

1 (At side bar)

2 MR. THOMAS: Your Honor, the government has a number
3 of concerns. I think for framing, Mr. Hecker here seems to be
4 wasting THE Court's and the jury's and the witness' time in
5 order to delay the start of the defense case, but along the way
6 what he is doing is putting before the jury an issue that is
7 legally irrelevant, which is the government's investigation.
8 The government would request that the Court give the Sand
9 instruction that the government's investigation is not on trial
10 and that Mr. Hecker be prohibited from continuing to invite the
11 witness to opine on what the prosecutors selected. Obviously,
12 Mr. Hecker can inquire about the witness' work, his knowledge,
13 the accuracy of the chart, but to go further, as Mr. Hecker did
14 and to expressly invite the jury to conclude that the
15 prosecution team did something wrong or that we committed an
16 act of fraud, is both outrageous and also not proper as a
17 matter of law.

18 MR. HECKER: First thing, I take issue with the
19 explicit suggestion that what I am trying to do is delay things
20 or try to buy time for our expert.

21 THE COURT: Yeah, I put credit on that, frankly.

22 MR. HECKER: I am exploring this issue which was
23 created by strategic decision that the government made here,
24 and I think we all understand the significant risk of
25 misleading a jury by putting up a witness who knows nothing

NAK5phi3

Salemme - Cross

1 about the case who is difficult to cross-examine although I
2 think that we are effectively making some points. If the
3 government is sensitive in particular about its own conduct I
4 understand why, but my point is going to focus on evidence
5 that's in the record that this witness either saw and chose not
6 to put on the chart or didn't ask be put on the chart or that
7 wasn't given to him because of strategic decisions that were
8 made by the government. It is a focus on the evidence in this
9 case, it is not focused on the government's conduct, per se.
10 It is about the choices they are making about what evidence to
11 put in front of the jury and which to highlight in this
12 demonstrative which we submit is extremely misleading.

13 I will stop there.

14 THE COURT: I think it is proper cross-examination.
15 My concern would be if there wasn't a basis for Mr. Hecker
16 asking about things that were omitted and I sustained the
17 objections when the questions were framed in the form of "Would
18 you agree with me when I said the following" because those
19 questions do have Mr. Hecker testifying. It is proper, given
20 what was presented to the jury for Mr. Hecker to say -- to
21 establish two propositions; one is that the witness did not
22 exercise any independent judgment and that the judgment was
23 exercised by a party that has a stake in the outcome of this
24 case regardless of what justice may have said about the
25 government's interest being in the right outcome rather than a

NAK5phi3

Salemme - Cross

1 victory. I think it is fair for Mr. Hecker to point out that
2 judgments were made not by this witness but by a party with a
3 stake. Number two, I think it is fair to point out the holes.

4 So, you have got my ruling.

5 MR. HECKER: Thank you, your Honor.

NAK5phi3

Salemme - Cross

(In open court)

BY MR. HECKER:

Q. Mr. Salemme, we were focused on the boxes on Government Exhibit 650 relating to the timeline entries December 18 and December 20 but where there is no box for December 19. Do you recall that?

A. Yes.

Q. With respect to other evidence that's in the record relating to what occurred on December 18, I would ask that at this time we publish Government Exhibit 408.

Are you familiar with Bloomberg chats?

A. Yes.

Q. This is a Bloomberg chat from December 18, the same day as the first couple boxes on your -- on the government's demonstrative slide. Did you review this chat in connection with preparation of Government Exhibit 650?

A. I will have to refresh my memory if I have seen this one before.

Q. Why don't we scroll down to the second page and ask you to just review it to yourself. My first question is really going to be whether this was shown to you at all. You can keep scrolling if you have had a chance to read that.

A. I am almost done. OK.

Q. If we can now scroll to 12/18/2017, 14:15:59, and just the whole bottom of the page, if we could pull that out.

NAK5phi3

Salemme - Cross

1 Did you review this as part of your work in preparing
2 the timeline reflected in Government Exhibit 650?

3 A. I'm not sure a hundred percent if I have seen this before
4 but I could check my e-mail if I have received it before.

5 Q. Mr. White, I apologize. Can you also capture -- there you
6 go.

7 Do you agree with me that at 14:15:59 UTC Phillip
8 Costa posts: Mpumalanga delegates are said to be urged to back
9 Ramaphosa.

10 Do you see that?

11 And then it says: Hit BBG now.

12 Do you see that?

13 A. I see that.

14 Q. Do you agree that is a reference to that news hitting
15 Bloomberg now?

16 A. I don't know if hit BBG now means -- I don't know exactly
17 what that means. That could mean hit the Bloomberg terminal or
18 something. I'm not sure what it means.

19 Q. Do you see in response Mr. Phillips said: But ioots over
20 five hours ago.

21 And then the next one said: It's done.

22 And then it says: CR by a lot.

23 Then it says: Recounting fourth time as DP too close.

24 Right?

25 A. I see it says that.

NAK5phi3

Salemme - Cross

1 Q. Now, in this you agree with me Mr. Phillips is saying Cyril
2 Ramaphosa by a lot; yes?

3 A. I don't know exactly what he is referring to. Cyril
4 Ramaphosa is "CR" but I am not sure exactly what this is
5 referring to.

6 Q. But we know this is on the 18th and on the 19th based on
7 what we reviewed a moment ago, there was discussion by
8 Mr. Phillips about a recount and forensic evaluation because of
9 ballots being stolen; right?

10 A. Yes, I do remember those chats that we just went over.

11 Q. Now, at the 17:25:12 mark do you see it say: 12.52 low
12 print in ZAR Nomura.

13 Do you see that?

14 A. I see that.

15 Q. Do you, as someone with experience in this industry, do you
16 agree that that is a statement that the dollar ZAR traded at
17 12.52 on December 18?

18 A. I agree that's what it says, yeah.

19 Q. You are not aware with any trading conducted by Glen Point
20 on December 18th, when the dollar ZAR traded all the way down
21 to 12.52; are you?

22 A. I'm not aware of the trading, I just -- I am aware that
23 says 12:52 low print in ZAR Nomura.

24 Q. You weren't informed, in preparing for your testimony, that
25 the dollar ZAR priced all the way down to 12.52 on December

NAK5phi3

Salemme - Cross

1 18th, and that there was no trading by Glen Point or

2 Mr. Phillips relating to that move in the dollar Rand?

3 A. Could you repeat the question? Which trading are you
4 specifically asking about?

5 Q. Any trading done by Glen Point in dollar ZAR.

6 A. I am aware they made trades in dollar ZAR. Which date are
7 you asking about?

8 Q. December 18.

9 A. December 18. I did not review all of the trades on the
10 18th.

11 Q. Would you agree with me that the fact that the dollar ZAR
12 traded all the way down to 12.52 on December 18, would be
13 important information if you are trying to understand the
14 connection between the 2017 ANC election and the OT Option
15 Timeline?

16 A. I don't know exactly how those two things are related.

17 Q. In the title of the slide.

18 A. Yeah. I don't understand exactly how the election would
19 affect the exchange rate.

20 Q. It seems like we are reviewing a lot of evidence that
21 suggests that the news relating to the election was being
22 monitored by Glen Point and had some relevance to the price of
23 the dollar Rand. Can we agree that that's the nature of the
24 evidence we are looking at?

25 MR. THOMAS: Objection, your Honor.

NAK5phi3

Salemme - Cross

1 THE COURT: Sustained.

2 Q. If we can go back to Government Exhibit 650 for a moment?

3 I just want to tie your prior testimony to this slide. The
4 entry on December 18 in which Fayman writes something to the
5 Glen Point macro distribution list, we agree you never spoke to
6 Mr. Fayman, right?

7 A. No, I never did.

8 Q. So you have no idea what his understanding was or what he
9 was trying to say in connection with the middle box in this
10 chart?

11 A. No.

12 Q. Would you want to know what he, himself, would say about
13 that?

14 MR. THOMAS: Objection, your Honor.

15 THE COURT: Sustained.

16 Q. And if I could go to the next box which references two
17 different government exhibits and includes just a snippet, the
18 one with: Drax is on the 2nd of Jan.

19 Do you see that?

20 A. I see that box, yes.

21 Q. Do you know what that is a reference to?

22 A. Not a hundred percent for sure. I did review JPM confirm
23 that had an expiration on the 2nd of January.

24 Q. Do you believe that the Jan 2nd date on the confirm is a
25 reference to the OT option that is in the title of the slide?

NAK5phi3

Salemme - Cross

1 A. The confirm is for an OT option but I can't -- I don't a
2 hundred percent know if this is -- they're talking about the
3 same thing.

4 Q. And you don't know who Drax is?

5 A. I do not know who Drax is.

6 Q. The next box, on December 20th, includes the statement,
7 Phillips tells Costa: I need you to start fucking around in
8 dollar/Rand tonight.

9 Do you see that?

10 A. Yes, I see that.

11 Q. You have no idea what that means, right?

12 A. No.

13 Q. You do know, don't you, that there was no trading by
14 Glen Point on December 20th?

15 A. I don't know the trading specifically on December 20th. I
16 don't know the details of that trading.

17 Q. You don't know that it happened, right?

18 A. I don't know if it happened or not.

19 Q. You haven't seen any evidence that it did happen, right?

20 A. No, not on the 20th.

21 Q. If there had been trading on the 20th, would you think it
22 would be relevant to the box on the far right about a
23 discussion about trading in the Rand?

24 A. Again, I don't know what would be completely relevant or
25 not.

NAK5phi3

Salemme - Cross

1 Q. And I think you testified earlier that you have heard some
2 South African slang but you don't have an independent
3 understanding of what it might mean, right?

4 A. No, I don't have an independent understanding of South
5 African slang.

6 Q. You don't know what "lash" means?

7 A. I don't have a complete understanding. I know in soccer
8 matches sometimes they will say give it a lash, like give it a
9 try if someone takes a wild shot from the 20 yard line or
10 something.

11 Q. Right. That's just from the soccer context?

12 A. Yes. I don't know exactly what it means in this context.

13 Q. You have not heard it in the trading context?

14 A. I have not heard it personally in the trading context.

15 Q. And you agree with me it is possible if someone were to
16 listen to the actual call that they might have a different
17 interpretation of what was said on the call including because
18 this one, in particular, is actually hard to decipher?

19 A. I agree that what -- that I heard: Let's then go just
20 fucking lashes through 50 tonight. I agree that's what it
21 said, what I listened to.

22 Q. That wasn't my question. I said that one was particularly
23 hard to understand. There were a lot of distortions, you spoke
24 earlier about the sound quality not always being great. That
25 was one of the calls that has that, correct?

NAK5phi3

Salemme - Cross

1 A. I don't remember which call specifically had voiceovers or
2 unintelligibles, or not.

3 Q. OK.

4 A. But we can look at the transcript if --

5 Q. Well, the transcript actually is not evidence.

6 A. Or listen to the audio.

7 Q. I want to go to the next page of your timeline. You
8 have -- the first page ended at -- do you know if anything
9 happened on December 21st of relevance to this case?

10 A. I do not know.

11 Q. What about December 22nd?

12 A. I don't know what else happened other than these
13 conversations.

14 Q. And you don't know if these conversations are actually
15 relevant either, do you? You just took the ones the government
16 gave you to put on the slide and tried to make sure that what
17 is written here is what is in the underlying documents; right?

18 A. Correct.

19 Q. And if there are things missing that aren't included, you
20 won't know why they were missing or not included; right?

21 A. Correct.

22 Q. In the middle of this page there is one box for Saturday,
23 December 23rd to Monday December 25th, and it says Weekend and
24 Christmas holiday.

25 Do you see that?

NAK5phi3

Salemme - Cross

1 A. Yes.

2 Q. Anything happen that weekend that might be relevant to the
3 jury's understanding of the relationship between the ANC
4 election and the OT Option Timeline to your knowledge, sir?

5 A. I'm not sure if anything happened.

6 Q. Were you provided any documents that spoke about
7 developments in the ANC election over that holiday weekend by
8 the government?

9 A. No, I was not.

10 Q. Did you ask them whether anything happened between December
11 22nd and December 26th that might be of interest to this jury?

12 A. I did not.

13 Q. I'm going to show you what's in evidence as Defendant's
14 Exhibit 511 and we will start just on the -- well, no, show the
15 whole page.

16 Sir, will you agree with me that this document is
17 dated December 23rd, 2017?

18 A. Yes, I agree.

19 Q. And the subject is: SA weekend read ST on Zumxit.

20 A. Yes, I agree that's what it says.

21 Q. Do you agree with me that Zumxit is relating to Jacob Zuma,
22 the then president of South Africa?

23 A. I don't know that for sure.

24 Q. Would it surprise you that Zumxit related to the question
25 of whether Jacob Zuma was going to leave office or not?

NAK5phi3

Salemme - Cross

1 A. It would not surprise me. Z-U-M are the first three
2 letters of his name.

3 (Continued on next page)

NAKGphi4

Salemme - Cross

1 BY MR. HECKER:

2 Q. And if we read the beginning of this email, it says,
3 Article via link and below from Sunday Times.

4 Do you see that?

5 A. I see that.

6 Q. And it says, Yes, out today given Christmas on zumexit
7 logistics through January in line with my thinking.

8 Do you see that?

9 A. I see that text, yes.

10 Q. And this was sent by Peter Montalto at Nomura; correct?

11 A. Yeah, now that it's been boxed out, I see that, it's
12 from --

13 Q. Is that a research analyst's name that is familiar to you?

14 A. It is not familiar. I don't know who that is.

15 Q. This section says, My baseline is zumexit occurs more at
16 end of Jan NEC legkotla just before state of the nation, but is
17 risk of delay.

18 Do you see that?

19 A. I see that text, yes.

20 Q. So this is relating to the question of when zumexit occurs;
21 correct?

22 A. Yeah, they're talking about when it occurs.

23 Q. And this analyst is predicting that it will happen more at
24 end Jan.

25 Do you see that?

NAKGphi4

Salemme - Cross

1 A. I see end Jan, yes.

2 Q. Before state of nation, but is risk of delay.

3 Do you see that?

4 A. I see that text, yes.

5 Q. And then next sentence says, It will be a complex process
6 involving NEC deals.

7 Do you see that?

8 A. I see that text, yes.

9 Q. Do you know what the NEC is?

10 A. I remember it being the acronym, but I don't remember what
11 it is. I could refresh, though.

12 Q. It relates to a committee that's responsible for running
13 the party, do you know that?

14 A. I don't know that.

15 Q. If we go to the next section below this, ANC and secret
16 talks on early Jacob Zuma exit.

17 Do you see that?

18 A. I see that text, yes.

19 Q. It appears the article relates to secret discussions that
20 are getting reported at this time about an early Jacob Zuma
21 exit, yes?

22 A. I don't know what the exact article is about. But I agree
23 that the title is what you said it is, but...

24 Q. And it says, Defiance of party on state inquiry adds fuel
25 to push for managed departure.

NAKGphi4

Salemme - Cross

1 Do you see that?

2 A. I see the text, yes.

3 Q. And the report says that the Sunday Times has learnt that
4 secret meetings are planned after Christmas to discuss ways to
5 manage Jacob Zuma's exit.

6 Do you see that?

7 A. I see the text, yes.

8 Q. And the next sentence says that senior ANC leaders are
9 engaged in urgent secret talks to negotiate an exit for
10 President Jacob Zuma, possibly as early as next month.

11 Do you see that?

12 A. Yes, I see that.

13 MR. HECKER: Next page, please, at the top.

14 Q. With Cyril Ramaphosa having been elected ANC president this
15 week, concerns are growing among people close to Zuma that
16 there will be immediate attempts to recall him.

17 Do you see that?

18 A. I see the sentence, yes.

19 Q. And the next paragraph says, Tomorrow, Anglican Church
20 Archbishop Thabo Makgoba is expected to exert pressure on
21 Ramaphosa to force Zuma out.

22 Do you see that?

23 A. I see the text, yes.

24 Q. Do you know what the Anglican Church is?

25 A. No.

NAKGphi4

Salemme - Cross

1 Q. Are you aware that it is a significant player in South
2 African politics?

3 A. I am not aware of that, no.

4 Q. Are you aware that this article is connecting an expected
5 speech to exert pressure to force Zuma out?

6 A. I don't know about a speech. I don't see the word speech
7 in there. I see exert pressure and then a Christmas sermon,
8 but I don't know about a speech.

9 Q. I guess I was conflating a sermon with a speech, and I
10 could understand why that might cause some confusion.

11 But is a sermon a form of a speech or an address?

12 A. Yes, a sermon is someone talking and a speech is someone
13 talking.

14 Q. And it was going to happen on Christmas, might that be
15 Christmas Eve?

16 A. Or Christmas Day, I'm not sure which.

17 Q. Seems to be a suggestion in this news article that that
18 sermon on either Christmas Eve or Christmas Day might be
19 relevant to when zumexit occurs; is that a fair interpretation,
20 sir?

21 MR. THOMAS: Objection, your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: I agree that the -- that it says
24 insiders say Makgoba would use his Christmas sermon to call on
25 the National Executive Committee backed by the party's MPs to

NAKGphi4

Salemme - Cross

1 act boldly and quickly to remove Zuma, I agree that text is
2 there.

3 Q. And an investment banking analyst at Nomura was sending
4 this around to Glen Point; right?

5 A. Yes.

6 Q. And this was the 22nd, right before the Christmas weekend,
7 even though the date of the article that is cited is the 23rd;
8 is that correct? And if we pull back, you can look at that.

9 MR. HECKER: Go back one page.

10 Q. So let me just try that again. The date of the Bloomberg
11 says Saturday, 12/23?

12 A. Yeah.

13 Q. This was sent on the 23rd, yes?

14 A. Yes, I agree.

15 MR. HECKER: Now, go back to government demonstrative
16 650, second page.

17 Q. If this were relevant to the jury's consideration of the
18 issues in this case, it would go in that middle box that covers
19 that three-day period, weekend and Christmas holiday, yes?

20 A. It occurred in that time frame.

21 Q. The 23rd?

22 A. It occurred on the 23rd, yes.

23 Q. So if you were doing the job that you were asked to do here
24 of putting into the timeline information that was relevant to
25 the 2017 ANC election and OT option timeline and you determined

NAKGphi4

Salemme - Cross

1 that it was relevant, you would put it in this box, yes?

2 A. I wasn't asked to determine what was relevant or not.

3 Q. Let me try it differently.

4 If the government had given you this and said, add it
5 to your timeline, can we agree it would go in that middle box?

6 A. Yeah, it would -- it happened on Saturday, December 23rd,
7 so it would be in a box labeled Saturday, December 23rd.

8 Q. But the government didn't give this to you?

9 A. No, I didn't see this one.

10 MR. HECKER: Can we show this witness defense
11 Exhibit 811.

12 Your Honor, we would ask to publish this to the jury.
13 It is not yet in evidence, but it's not being offered for the
14 truth at this time. It's offered for impeachment.

15 THE COURT: No. You can read it, you can tell them
16 what --

17 MR. HECKER: Fair enough.

18 THE COURT: You can't publish it to the jury.

19 BY MR. HECKER:

20 Q. Sir, are you aware that, on December 24th, there were news
21 reports that South Africa's ruling ANC was going to ask Zuma to
22 step down that day?

23 A. I was not aware of this.

24 Q. Were you aware that this report was that ruling party's
25 leaders have been discussing a conflict free exit for Zuma

NAKGphi4

Salemme - Cross

1 after his term of president came to an end with Deputy
2 President Cyril Ramaphosa taking the helm?

3 A. I was not aware of these discussions.

4 Q. If you were aware of them and this information had been
5 provided to you as something to put on your chart --

6 MR. HECKER: Let's pull back up the chart.

7 Q. -- can we agree that that too would go in the box in the
8 middle that covers a three-day period, since I'm representing
9 that that happened on the 24th of December?

10 A. Yes, that's where it would go in the timeline.

11 Q. You saw reference in Defendant's Exhibit 511, which was in
12 evidence, to a Christmas sermon, yes?

13 A. That's the document we just looked at?

14 Q. Yes.

15 A. Yes, the Christmas sermon, there was reference to that.

16 Q. Sir, are you aware that, in fact, there was a Christmas
17 sermon that was published on December 24th, Christmas Eve that
18 included an explicit call for Zuma to step down and allow --

19 MR. THOMAS: Objection.

20 Q. -- a transition of power?

21 THE COURT: Overruled.

22 A. I'm not aware of the sermon being published.

23 Q. If it had been provided to you as a document that was
24 relevant to the question of when Jacob Zuma would exit, would
25 it have gone in the middle box of Government Exhibit 650, since

NAKGphi4

Salemme - Cross

1 that occurred on Christmas Eve, December 24?

2 A. Yes, it would go there in the timeline.

3 MR. HECKER: At this time, I'd like to show the
4 witness what's in evidence as defense Exhibit 653.

5 Q. Sir, is this a document, a chat that you reviewed that's
6 dated December 26th, 2017?

7 A. I have not seen this before.

8 MR. HECKER: Can we turn to the second page, pull up
9 lines 11:43:04 and the next line.

10 Q. This is PCosta, My feel is we go lower this afternoon but
11 who knows.

12 Do you see that?

13 A. I see that text.

14 Q. You see, NCroix -- do you know who Mr. Croix is?

15 A. No.

16 Q. Are you aware that he's a research analyst at Glen Point?

17 A. I am not aware of that.

18 Q. He responds, Yeah makes sense after any remaining hedges
19 taken off associated with the 12.50 barriers considering the
20 good news over the weekend with zumexit on the horizon.

21 Do you see that?

22 A. I see that text.

23 Q. You see that is a reference to the good news over the
24 weekend with zumexit, yes?

25 A. I see that's what it says. I don't know if that's exactly

NAKGphi4

Salemme - Cross

1 the good news.

2 Q. You don't know what the good news is?

3 A. No.

4 Q. Might be that sermon that called for Zuma to step down on
5 the topic of zumexit; is that a reasonable inference?

6 MR. THOMAS: Objection, call for speculation.

7 THE COURT: Sustained.

8 BY MR. HECKER:

9 Q. Sir, if there was good news over the weekend of Christmas
10 and the government had given you that information to put on
11 your chart --

12 MR. HECKER: Can we go back to Government Exhibit 650,
13 second page, middle box.

14 Q. -- it would have gone there; right?

15 A. If it was on the 25th.

16 Q. Over the weekend, the 23rd, 4th or 5th; right?

17 A. Yeah, but I wouldn't be able to say what good news that was
18 or what that means in overall context.

19 Q. The government would have to decide that that was something
20 that you should put on your chart in order to make this chart
21 not misleading to the jury for you to have included this on the
22 chart, yes?

23 A. Again, I don't know about what would make it misleading or
24 not, but --

25 Q. Right. If they had given it to you, it would have gone in

NAKGphi4

Salemme - Redirect

1 the middle box, yes?

2 A. Yes.

3 Q. So we have now reviewed a number of both exhibits and facts
4 that occurred over that weekend that aren't in this
5 demonstrative.

6 Can we agree on that?

7 A. Correct.

8 Q. If those facts are material to the jury's consideration,
9 would you agree with me that they ought to be in that box?

10 MR. THOMAS: Objection, your Honor.

11 THE COURT: Sustained.

12 MR. HECKER: One moment, your Honor.

13 (Conferring)

14 MR. HECKER: I don't have further questions at this
15 time.

16 THE COURT: Any redirect?

17 MR. THOMAS: Yes, your Honor.

18 REDIRECT EXAMINATION

19 BY MR. THOMAS:

20 Q. Good afternoon, Special Agent Salemme.

21 A. Good afternoon.

22 Q. How many times have you testified in court before?

23 A. One other time.

24 Q. How long have you been at the FBI?

25 A. Two and a half years.